

A regular meeting of the Board of Aldermen was held Tuesday, December 8, 2009 at 7:30 p.m. in the Aldermanic Chamber.

President Steven A. Bolton presided; City Clerk Paul R. Bergeron recorded.

Prayer was offered by City Clerk Paul R. Bergeron; Alderman Tamposi led in the Pledge to the Flag.

The roll call was taken with 15 members of the Board of Aldermen present.

Her Honor Mayor Donnalee Lozeau and Corporation Counsel James M. McNamee were also in attendance.

REMARKS BY THE MAYOR

Thank you Mr. President, members of the board. Tonight you had the opportunity to hear from my Transportation Task Force. As you know there are two additional meetings scheduled for tomorrow, seeking more input. Please be sure to share any additional thoughts and ideas that you may have with me or Tom Galligani or one of the members of the committee. Over the next few weeks they will be finalizing the report. It is my sincere hope that this report will provide a framework for discussions and priorities moving forward. That final report will be presented to this board when completed.

On tonight's agenda, I would call your attention to three items:

Under communications, the Pennichuck Presentation. This will be the first time since I have been Mayor that we have had the opportunity to present in a public forum some conclusions that we have reached. I would thank the board President in advance for providing me the opportunity to make opening remarks prior to the presentation.

Under nominations, I appreciate Alderman Cox's willingness to move for a rules suspension to allow for the introduction of two new nominees as Review and Comment Commissioners for the Personnel and Administrative Affairs committee's consideration. I was unable to complete these appointments in time for inclusion last Friday.

Under unfinished business ordinances, O-09-84 relative to the permit fee for the landfill. At the last Board meeting, I briefly mentioned this legislation and perhaps should have spoken at greater length regarding it, which may have prevented a motion to table without discussion. I would hope you could support removing this legislation from the table. The Board of Public Works has, for more than a year, looked over the policies and procedures at the landfill. We have carefully weighed changes and recommendations. A recommendation for a fee increase is not taken lightly.

Tonight on your desks I have provided a chart that depicts the fees in surrounding communities, I have done this because one of our biggest concerns is that our landfill is attractive to our surrounding communities. Worth noting is that these other communities do not have landfills, instead they are transfer stations. Nashua, of course, could be considered both a landfill and a transfer station. While I certainly can appreciate the fiscal times we are in, I would again remind everyone this is a user fee that has not been increased in at least 8 years.

Our new Superintendent has worked with her staff and the Board of Public Works to recommend some changes, this is one of them. We were asked in committee where these funds would be used. The answer then is the same as now, that final decision has not been made. We certainly have many items it could be used to offset the costs of, as we do not generate enough revenue, as you know, to cover operations. But any way it is used will certainly result in an off-set to the amount needed to be raised through property taxes.

Permits are customarily sold in November and December. Therefore, I would ask no matter what your position on this matter is, that final action be taken this evening.

Tonight I would close my remarks by mentioning, as President Bolton did last night, that one of our officers was injured in the line of duty last week. This incident is a stark reminder for all of us of the reality our police officers face every day. Not knowing what any shift will bring their way on any given day; these officers selflessly attend to the community's safety and wellbeing. As Officer Peter LaRoche recovers from his injuries and resulting complications I want to extend my thoughts, prayers, and gratitude to him and his fellow officers. I would also offer the support and gratitude of Nashua to the families of our officers as each shift brings with it a level of anxiety for them that not everyone experiences when their loved ones go to work. It is the dedication and commitment of our officers to our safety that allows us to go about our daily lives with a sense of security. For this, we should all be grateful. As always, thank you for your kind attention this evening.

RESPONSE TO REMARKS OF THE MAYOR

Alderman Wilshire

I would just like to commend the Mayor for her comments on the Police Department and the officer that suffered that injury last week. Thank you.

RECOGNITION PERIOD – None

READING MINUTES OF PREVIOUS MEETINGS

MOTION BY ALDERMAN MCCARTHY THAT THE MINUTES OF THE BOARD OF ALDERMEN MEETINGS OF NOVEMBER 24, 2009, BE ACCEPTED, PLACED ON FILE, AND THE READINGS SUSPENDED
MOTION CARRIED

COMMUNICATIONS

Mayor Lozeau

Thank you Mr. President. As all of you know, last year we hired special advisors to explore all of the fair market value alternatives to acquiring Pennichuck Corporation. Tonight, as I mentioned, we have this opportunity to present our conclusions publicly. The following presentation you will see tonight will explain how our advisors arrived at their fair market value.

Let me tell you something that I think most of you will agree with. I believe that paying more than fair market value is like taking money from our citizens and handing it to out of state investors. After considering all of our alternatives, we have asked our advisors to stop their efforts after this evening. Don't be concerned, I did warn them before tonight. This is not the first time they heard me tell them.

We will continue our eminent domain appeal, and now more than ever I believe that the PUC got it wrong when they didn't come up with a true fair market value. This evening I am going to introduce to you Mr. Arthur Gottlieb from C.W. Downer. He is going to present to you the findings on behalf of all of the advisors. It is the first time I have ever hired investment bankers, and I wasn't sure what to expect. Mr. Gottlieb and his team and the other advisors have gone so far above and beyond and have given me a confidence in the things that you are going to see this evening in the presentation than I have ever had when looking at these items that we will hear about tonight. It is my great pleasure to introduce Mr. Arthur Gottlieb who will come up. He has a presentation.

The presentation was given by Arthur Gottlieb of C.W. Downer & Co. A hard copy is attached hereto and made a part hereof.

Mayor Lozeau

I just want to also point out that the city web site has been updated, and that presentation is available there. There are presentations available for members of the public that would like a copy on the back table. Thank you Mr. President. I appreciate the opportunity.

PERIOD FOR PUBLIC COMMENT RELATIVE TO ITEMS EXPECTED TO BE ACTED UPON THIS EVENING - None

PETITIONS – None

NOMINATIONS, APPOINTMENTS AND ELECTIONS

Appointments by the Mayor

The following Appointments by the Mayor were read into the record:

Business and Industrial Development Authority

Dean Jackson (Re-Appointment)
5 Mack Hill Road
Amherst, NH 03031

Term to Expire: September 13, 2012

**MOTION BY ALDERMAN COX THAT THE RULES BE SO FAR SUSPENDED AS TO ALLOW FOR THE READING OF MAYORAL APPOINTMENTS RECEIVED AFTER THE AGENDA WAS PREPARED
MOTION CARRIED**

Review and Comment Commission

Jean Gottesman (New Appointment)
18 Indian Rock Road
Nashua, NH 03063

Term to Expire: December 1, 2012

Leslie Mendenhall (New Appointment)
14 Fowell Avenue
Nashua, NH 03060

Term to Expire: December 1, 2012

**MOTION BY ALDERMAN COX TO ACCEPT THE APPOINTMENTS BY THE MAYOR AS READ AND REFER THEM TO THE PERSONNEL/ADMINISTRATIVE AFFAIRS COMMITTEE
MOTION CARRIED**

REPORTS OF COMMITTEE

Budget Review Committee 11/23/09

There being no objection, President Bolton declared the report of the November 23, 2009 Budget Review Committee accepted and placed on file.

Finance Committee 12/02/09

There being no objection, President Bolton declared the report of the December 2, 2009 Finance Committee accepted and placed on file.

CONFIRMATION OF MAYOR'S APPOINTMENTS – None

UNFINISHED BUSINESS – RESOLUTIONS

R-08-137

Endorsers: Alderman Jeffrey T. Cox
Alderman Michael J. Tabacsko

APPROPRIATING \$1,347,754.73 FROM UNANTICIPATED REVENUE-ACCOUNT #481-629 "SCHOOL DEPARTMENT REVENUE-SPECIAL EDUCATION, CATASTROPHIC AID" INTO ACCOUNT #981-5375 "SPECIAL EDUCATION EXPENDABLE TRUST FUND, AND EXEMPTING THE ANNUAL BUDGET LIMITATION BY \$1,747,755

R-09-208

Endorser: Alderman Jeffrey T. Cox
RELATIVE TO AUTHORIZING THE EXPENDITURE OF \$2,210,000 FROM THE SCHOOL CAPITAL RESERVE FUND FOR THE PURPOSE OF UPGRADING THE SCHOOL ACCESS CONTROL SYSTEM

R-09-250

Endorser: Alderman-at-Large Lori Wilshire
Alderman Marc W. Plamondon
Alderman Michael J. Tabacsko
Alderman Jeffrey T. Cox
Alderman-at-Large Steven A. Bolton
Alderman-at-Large Ben Clemons

APPROVING THE COST ITEMS OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE NASHUA BOARD OF POLICE COMMISSIONERS AND NASHUA POLICE PATROLMAN'S ASSOCIATION, THROUGH JUNE 30, 2011 AND TO FURTHER TRANSFER \$167,083 FROM ACCOUNT #597-86605 "CONTINGENCY – NEGOTIATIONS" AND \$31,825 FROM ACCOUNT #591-86005 "CONTINGENCY – GENERAL" INTO ACCOUNT #531-11900 "POLICE – PAYROLL ADJUSTMENTS" FOR THE PURPOSE OF FUNDING BASE SALARY ADJUSTMENTS IN CONNECTION WITH THE CONTRACT

Given its second reading;

MOTION BY ALDERMAN WILSHIRE FOR FINAL PASSAGE OF R-09-250

MOTION BY ALDERMAN TEEBOOM TO AMEND R-09-250 BY REJECTING THE COST ITEM OF ARTICLE 24, BY REMOVING THE SECOND PARAGRAPH BEGINNING WITH THE WORDS "EMPLOYEES DESIGNATED AS GROUPS 8, 9, AND 10, WHO WORK THE FIVE DAYS ON TWO DAYS OFF SCHEDULE SHALL RECEIVE AN ADDITIONAL SEVENTEEN DAYS OFF PER CALENDAR YEAR KNOWN AS SPECIAL PERSONAL DAYS, WHICH SHALL BE DESIGNATED BY THE EMPLOYEE UPON APPROVAL OF THE APPROPRIATE BUREAU COMMANDER"

ON THE QUESTION

Alderman Teeboom

That paragraph basically allows officers and the best I can determine also unaffiliated personnel

covered by this contract, 135 personnel covered, it allows those that work on a normal 5/2 day; 5 days during the week presumably Monday through Friday, two days off; Saturday and Sunday, get an additional 17 days of personal time paid even though they don't work those additional 17 days. The reason for that given to me questioning this during the Budget Review Committee meeting and trying to follow this up with questions to Chief Conley, was that if you work on a 4/2 shift and just to give an idea there are 93 officers who work the 4/2 shift and 28 work the 5/2 shift. If you work on a 4/2 shift obviously you get more time off because you all get paid on an annual basis. You work 4 days and get 2 days off. You basically get off 50% of the work time. If you work 5/2 you obviously get less time off.

The idea is that those who work 5/2 getting less time off get an additional 17 days. I don't understand that at all. I have worked 5/2 all of my life and I know others have worked weekends, but I don't get paid anything extra because someone else is on a different schedule even if I worked on a modified 5/2. Say some work 10 hour days and 4 days a week or some may work 9 hours a day 5 days a week. Whatever schedules we have we don't get compensated additional money because others work a different shift. It makes absolutely no sense.

I tried to find out what the cost of this cost item is and admittedly I approached Chief Conley kind of late. He said he didn't have an answer. He was absent. His financial person was absent. I tried to find out if unaffiliated were covered by this as well as affiliated in this contract. I think it is affiliated, but it is not clear. The point of it is that I don't think this is appropriate. I don't know of any other contract that does it.

I approached the legal office to try to find out the basis for this and they didn't know. They said it has always been there. Chief Conley in answering in a memorandum to Alderman Deane, which I had not seen before until they sent it to me, it went to the Budget Review Committee, but it didn't go to anybody else. Said it has something to do entitled by labor laws to have equal time. So you work different shifts you are entitled by labor laws to equal time. I never heard of that labor law before. I called the attorney who negotiated this contract on behalf of the city and asked him what labor laws are we talking about and he didn't know. He said there are a lot of labor laws, and he didn't know. I tried to get a hold of Chief Conley to find out what labor law he was referring to and he didn't answer back.

This is a cost item I think is unnecessary. I don't know why it got in there. It sort of crept in there and it has been there for a number of years. I tried to compute a figure. It was a little difficult to compute because it is based on 17 days and there is no daily rate identified for these shifts; 4/2, 5/2. Some have to work holidays and get paid double time when they work holidays. Some work weekends and shift all around. It is not clear what a daily rate is. Of course, you get different categories of officers, sergeants, patrolmen, master patrolmen. I tried to compute this, and I came up with a figure for the cost of this cost item somewhere between \$100,000 and \$150,000 just looking at the averages.

I don't think this cost is justified, and that is why I moved that it be rejected. I would like a roll call vote on that.

President Bolton

Is there further discussion as to that amendment?

A Viva Voce Roll Call was conducted, which resulted as follows:

Yea: Alderman Deane, Alderman Teeboom

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Nay: Alderman McCarthy, Alderman Chasse, Alderman MacLaughlin,
Alderman Wilshire, Alderman Clemons, Alderman LaRose, Alderman Tamposi,
Alderman Cookson, Alderman Cox, Alderman Tabacsko, Alderman Flynn,
Alderman Plamondon, Alderman Bolton

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MOTION FAILED

President Bolton

Before us is the motion for final passage of R-09-250. Is there discussion as to the motion for final passage?

Alderman Teeboom

I have a question to the Mayor Mr. President. Madam Mayor, during the discussion of the Budget Review Committee, a question came up on your guidelines to these collective bargaining agreement negotiators about wage increases. I know you had a guideline of 2.5%. I look at the contract and I see real increases of 5.9% and 4.4% respectively over the two years because it includes a cost of living increase and then the step increases. My question is when you gave a guideline Madam Mayor did that guideline include the step increases – looked at the total increase permissible?

Mayor Lozeau

Alderman Teeboom what I have come to understand from the Police Department is they do not consider their increases to be step increases, they consider them to be promotions of which their members have to be tested in order to move on to the next what we might call a step. That is what I have come to understand at this point.

Alderman Teeboom

The question was did it meet your guidelines.

Mayor Lozeau

The 2.5% increase did meet my guideline. The cost sheet shows you that percentage plus the increases that relate to their promotions. That is what brings it over that guideline.

Alderman Teeboom

Well I look at the sheet here that deals with positions. That is on Article 23 on page 19. You will see there are 5 categories plus part-time employees. I am addressing the categories of master patrolmen, senior patrolmen, patrolmen second year. A promotion is something that doesn't just automatically happen. When I was an Engineer I didn't just automatically become a Senior Engineer after three years. I didn't become automatically a Principle Engineer after five years. I didn't automatically become a Directing Engineer after seven years or ten years. I had to earn the promotion. I had to demonstrate at every step of promotion I took that I was qualified to be promoted and had contributed to be promoted.

These promotions aren't really promotions. After two years and I jotted these numbers down during the discussion, if I am totally incorrect on that correct me, but after two years you become a second year special officer, after five years you become a senior patrolman, after seven years you become a master patrolman. Those are just automatic time clocks the same as steps. Unless you have done something wrong you get promoted into those positions. This is a time issue. I see the Mayor frowning, but that is the way it was explained to us. If the Mayor wants to differ with that, but you go from patrolmen to senior patrolman by time. If anybody tells me differently that is the way it was explained when we asked the question. I don't consider those promotions. Those are step increases.

Unless somebody can tell me differently on this point, I can't consider that to be promotions. Therefore, if these are not promotions then raises are 5.9% average, which is way beyond the pail. That is in FY10 and 4.4% raises average in FY11. FY 11 is way beyond the 3% that we try to give to our personnel these days. Thank you.

President Bolton

Is there further discussion? The motion is for final passage.

MOTION CARRIED

Resolution R-09-250 declared duly adopted.

UNFINISHED BUSINESS – ORDINANCES

MOTION BY ALDERMAN COX TO TAKE FROM THE TABLE O-09-84

MOTION CARRIED

O-09-84

Endorser: Mayor Donnalee Lozeau

**INCREASING THE PERMIT FEE FOR LANDFILL DISPOSAL FOR RESIDENTIAL
NONCOMMERCIAL VEHICLES**

MOTION BY ALDERMAN COX FOR FINAL PASSAGE OF O-09-84

ON THE QUESTION

Alderman Deane

Thank you. I wasn't able to attend this part of the Public Works policy changes that they made, but I can't support raising another fee on the citizens. I am going to go back. I think this was crafted. I appreciate this, but I think it is missing a few items. It shows the \$65,000 that we currently receive on the 13,000 residential permits we sold. My interest is before we implemented the automated curb side collection of solid waste, how many permit fees did we sell back then? Probably not near 13,000. People used to line up the streets with their trash when it was all hand picked. In essence, when we put the automated system in we reduced the amount of waste that could be put at curbside. Hopefully we forced people to do some recycling to save some air space in our landfill, but the increase to the \$65,000 I haven't heard it will show there will be a reduction of the \$65,000 from the supplemental appropriation that is asked for year after year after year to support the operations and maintenance of the solid waste department because it no longer survives on its own revenue.

I am not going to support increasing this by \$5. It may sound kind of nickel/dime, but enough is enough. The citizens contributed \$3 million to this landfill last year in their tax bills. Yes they got their trash picked up, yes they got their recyclables picked up, they own the landfill; they pay for the

bonds, they pay for all of the equipment, they pay for all of the labor. Part of that they paid for with their \$3 million contribution as a supplemental appropriation to the operations, maintenance, and cost of the landfill.

I see no reason to raise this by \$5. Three million is enough. We don't have to increase the permit fee by another \$5. It just doesn't make any sense.

Alderman Tabacsko

Thank you. I think I am more moved by the chart that indicates that we may be over attractive to surrounding areas, and I think that the fact that the sticker fee has been where it is at for as long as it has been is also a telling tale. However, representing Ward 5 where the landfill is located, the people in Ward 5 bear a little bit of an extra burden I would say, and I know the landfill strives and works hard every day at being a good neighbor, but sometimes being neighborly requires some additional things. I would like to offer an amendment.

MOTION BY ALDERMAN TABACSKO TO AMEND O-09-84 IN THE BODY OF PARAGRAPH C IMMEDIATELY FOLLOWING THE FEE OF TEN DOLLARS (\$10) BY INSERTING A SENTENCE THAT READS "EXCEPT THAT FOR ANY NON-COMMERCIAL PASSENGER VEHICLE REGISTERED TO AN ADDRESS WITHIN WARD 5, THE FEE SHALL NOT EXCEED FIVE DOLLARS (\$5.00)"

ON THE QUESTION

Alderman Teeboom

My sticker doesn't say Ward 5 so when I come by and say I am from Ward 5 how are you going to check me?

Alderman Tabacsko

From your driver's license I would hope or your registration actually as that is what you need to show to get your sticker because you have to be in Nashua to get the sticker correct?

Alderman Teeboom

Are you saying your sticker will say I am from Ward 5?

Alderman Tabacsko

No.

Alderman Teeboom

Then how do you know again? I am talking about the permit operator.

President Bolton

Alderman Teeboom, in order to get the permit you have to prove where you live then you get the permit. Once you have the permit you can drive your car in. The permit doesn't have to say Ward 5 or Ward 2 or any other ward. It is what you pay for the permit when you buy it. You can't buy it until you prove where you live already.

Alderman Teeboom

You didn't follow my point. My point was I come in I walk in with my permit not to the City Hall where I pay my permit fee, I am talking about going into the landfill and I go by that little gate, and that little gate operator looks at my little sticker and the sticker says resident of Nashua and I go in. I thought maybe you were going to give Ward 5 operators a special color on a sticker perhaps.

President Bolton

Alderman Teeboom it won't be necessary for the operator to know what your address is. As long as you have a permit regardless of how much you paid for the permit you get in just by having a permit. Does that satisfy your confusion?

Alderman Teeboom

Thank you.

President Bolton

Is there further discussion as to the amendment?

Alderman Chasse

I think it is a noble idea, but now we are going to open up a can or worms unless you say to people that live in Ward 7 that have the waste treatment plant down there, and we know for a few years back we had major problems down there with odor, they are going to look for a cutback and if there is anything else in special wards, they will be looking to say well can you help me out too. I can't support that. I think it will open up a can or worms.

President Bolton

Is there further discussion as to the amendment?

Alderman Clemons

As an Alderman-at-Large representing the entire city, I also cannot support that amendment although I do sympathize with the maker of the motion.

Alderman Plamondon

Although I concur it is a noble motion, this would be analogous to Ward 4 residents not having to pay parking meters or reserved parking spots would now be free or because of the traffic congestion within the downtown area we will set aside certain roads for only Ward 4 residents. As a city, we share and carry the burden of ourselves as a city, every ward. That is why I just can't support it.

Alderman Cox

I applaud the effort for the odor mitigation I guess you would call it for Ward 5 putting up with the landfill, but I think under a dollar amount as we discussed in committee is more than fair and reasonable for what we offer here in the city. As Alderman Deane mentioned earlier, the services we do provide I think he left a lot off. When we had the ice storm and they picked up all the

branches, brush, trees, you can still get a refrigerator picked up, a couch, many services that many towns don't offer anymore. To be able to go there and utilize it for the dollar amount I think is more than fair and reasonable. Thank you.

President Bolton

Right now we are discussing the amendment to have a special rate in Ward 5. Is there further discussion on that amendment?

MOTION FAILED

President Bolton

Before us is a motion for final passage of O-09-84.

Alderman Plamondon

Thank you. I am going to support the motion to increase the fee to \$10. As history would have it, I sat on the board when we initially raised the fee last. The original legislation came in at \$10, which would have been a substantial jump. At that time, it was decided to make it in steps. Five dollars was the compromise. Back then there were arguments for the \$10 and they could have been justified, but the debate was still to take a compromise and then \$5 was a compromise. As a city we have gotten larger, have more expenses, more trash so I think this is certainly due particularly when you look at surrounding communities and what they have to pay. They are still getting a bargain in Nashua, a huge bargain. Thank you.

Alderman Wilshire

I find myself agreeing with Alderman Deane. I think the price has been paid for everything we have done at the landfill. I am not in favor of increasing this fee. There has got to be another way to discourage other communities from using our landfill without the taxpayers and the rate payers paying more.

Alderman Cookson

Thank you. I just wanted to share a piece of information that I received just today. It is in regard to the operation of the landfill and the amount of revenue that is generated through our recycling program. We do have some issues that we need to address with the landfill. Our recycle program has decreased their revenue from FY07 from approximately \$134,000 annually to FY08 \$151,000, FY09 \$22,000, and FY10 \$3,000. We are seeing a decline in the revenues generated by recycling programs. We need to do an operational analysis of what services we are going to be able to provide. The increase in rate from \$5 to \$10 for this permit is not going to solve the problems of our solid waste department. This is a bigger problem than just \$5 per permit.

Alderman Teeboom

I'm looking at the amount of total revenue gained of \$65,000. I am trying to figure out how much we are spending on the solid waste. Is it about \$6 million or thereabouts? That is the way I remember it. This is almost nothing. The enterprise fund, it is really not an enterprise fund. The idea of an enterprise fund is a self-supporting fund. Our sewer system is self-supporting because we charge a substantial fee. The solid waste is not self-supporting. I believe last time it was a \$3 million transfer. The \$65,000 goes nowhere towards covering the \$3 million. You can just see if you are going to have to come up with this \$3 million, it takes \$5 to raise \$65,000 you can see that it would take about 45-50 times as much to cover that \$3 million.

This doesn't really make sense. Also I don't quite understand what we are going to do with the extra \$65,000 except cover a big hole that costs \$3 million. I think Mayor we need a better plan. One of the plans might be not to have solid funds be an enterprise fund any longer. It really doesn't fit the state definition of an enterprise fund as you well know. I don't think this is an answer. It is a band aid, it is going to get people upset, and it really solves nothing because what are you going to do with \$65,000 when you have a \$3 million hole? Thank you.

MOTION BY ALDERMAN DEANE TO RE-REFER O-09-84 TO PERSONNEL/ADMINISTRATIVE AFFAIRS COMMITTEE

MOTION BY ALDERMAN TEEBOOM FOR INDEFINITE POSTPONEMENT RULED OUT OF ORDER BY PRESIDENT BOLTON

Alderman Cox

I would just respectfully request that we do something with this as the issuance of the permits is upon us. December 31st they expire. For the tickets to be made, priced, announcements put out, we don't have time to re-refer this to committee and then get it back out in time for the issuance of the permits. Thank you.

Alderman Deane

I respectfully disagree. My landfill permit has no dollar amount on it. We can change the price by ordinance any time we want to. When the stickers are ordered they have nothing but a date on them. The numbers are placed in manually. We can change this at any given time. If the price goes up or there is a mad dash for them early in the year if we don't have it done or the new board has to deal with it so be it, but I don't think that is really an issue. Thank you.

President Bolton

The motion is to re-refer.
MOTION FAILED

President Bolton

The motion is for final passage. Is there any further discussion?

MOTION BY ALDERMAN CLEMONS TO AMEND O-09-84 BY REDUCING THE FEE FROM TEN DOLLARS (\$10.00) TO SEVEN DOLLARS (\$7.00)

ON THE QUESTION

Alderman Clemons

This motion seeks to find a compromise and I think as Alderman Plamondon had put it before, there should be a – back when this was set at \$5 the price was incremental in the past, and I think that we should follow that if we are going to increase it, and I think that this seeks to find that common ground. I don't think that increasing fees in this economy, as Alderman Deane has said, is something that we should take lightly. However, as pointed out by Alderman Cookson, there are some falling revenues so we need to find a balance. I think that \$7 may be the balance. Thank you.

Alderman Tabacsko

Thank you. Notwithstanding my earlier attempt, I think Alderman Clemons has taken the proper course on this, and I will support his motion to amend to \$7.

Alderman Deane

The comments made earlier about the reduction in the revenue in the recyclables is market driven period. That is what it is all about.

Alderman LaRose

Thank you Mr. President. I can't support the amendment down to \$7. I will support a \$10 fee. I find that many times we lack in raising our fees at appropriate times. What happens is we get so far behind that when it is time to raise the fees the fees have to go up even more than what we originally wanted to. I think it makes more sense to raise it \$5. I understand that times aren't as good as they should be, but we also have to run this city as a business, and we can't continue to say well times are tough and so we can't do anything. That is not taking a progressive attitude towards running the city. Thank you.

Alderman Deane

Thank you. To the previous speaker, this is for a residential permit. The business community isn't affected by this. It is those who live in the community that pay taxes that pay to operate this landfill who are being asked to have a \$5 increase or 100% increase to what they are currently paying.

Alderman Flynn

I won't support this motion. I am not going to support the \$10 either. When we passed the budget back in the spring there was a real hope then that most taxpayers would see no tax increase. As it has turned out now apparently over 20% of the residents have seen a tax increase. Some of them are \$300, \$500. One I was talking to is out of work. We also passed on a \$45 fee or essentially the equivalent of a \$45 fee for wastewater fees for residents when we passed that most recent wastewater fees for residents when we passed that most recent agreement on the rates.

We have been nibbling away. Tonight we passed a contract for the policemen where we agreed to fund an extra \$830,000 of expenses in FY10 over FY09. We have to take our foot off the throat at some point, and give them just a little bit of room to breather. I think \$65,000 is not worth going after that last dime in the pocket for me so I am not going to support that or the \$7.

President Bolton

The motion before us is to amend the measure by setting the permit fee at \$7 rather than \$10. Is there further discussion as to the motion to amend?

MOTION FAILED

President Bolton

Before us is a motion for final passage of O-09-84. Is there any further discussion?

Alderman Cookson

A question through you to the Mayor please. Thank you. Mayor was there an analysis done in the

raising of this rate from \$5 to \$10? Are we still expecting approximately 13,000 residents to purchase the permit or do we see an increase or a decrease in that number?

Mayor Lozeau

Actually this is one item out of a lot of things that we are looking at as it relates to our policies and procedures. Yes it was looked at whether we, in our best estimate, believe that those permit numbers would drop, and we don't see that happening. Again, most people that use it use it very frequently and are still amazed most times that it is \$5 a year. I think \$.80 a month; I don't think a lot of them that use it would say I am not going to use it any longer.

Alderman Cookson

Do you know if there was an effort by the staff at the landfill to inquire or ask upon those people using the landfill if they would, sort of like a pulsing survey, if they would mind an increase in the fee?

Mayor Lozeau

I don't know if there was a collective effort by the staff Alderman Cookson, but I know that after the Board of Public Works had discussion about it, I have had citizens in my travels talk to me about using the landfill and I have asked them that question directly, and I have been told that it is still the best deal around.

Alderman Cookson

Thank you.

Mayor Lozeau

You are welcome.

President Bolton

Is there further discussion? The motion is for final passage of O-09-84.

A Viva Voce Roll Call was requested, which resulted as follows:

Yea: Alderman McCarthy, Alderman LaRose, Alderman Tamposi, Alderman Cox,
Alderman Plamondon

5

Nay: Alderman Chasse, Alderman Deane, Alderman MacLaughlin, Alderman Wilshire,
Alderman Clemons, Alderman Cookson, Alderman Tabacsko, Alderman Teeboom,
Alderman Flynn, Alderman Bolton

10

MOTION FAILED

**MOTION BY ALDERMAN DEANE FOR INDEFINITE POSTPONEMENT
MOTION CARRIED**

Ordinance O-09-84 declared indefinitely postponed.

NEW BUSINESS – RESOLUTIONS- None

NEW BUSINESS – ORDINANCES

O-09-87

Endorsers: Mayor Donnalee Lozeau
Alderman Marc W. Plamondon

**AMENDING THE 'LAND USE CODE' BY AMENDING THE PROVISIONS
PERMITTING OUTPATIENT ADDICTION TREATMENT CENTERS**

Given its first reading;

**MOTION BY ALDERMAN TABACSKO TO ACCEPT THE FIRST READING OF O-09-87, ASSIGN IT TO THE PLANNING & ECONOMIC DEVELOPMENT COMMITTEE AND THE NASHUA CITY PLANNING BOARD AND THAT A PUBLIC HEARING BE SCHEDULED FOR MONDAY, DECEMBER 21, 2009 AT 7:00 PM IN THE ALDERMANIC CHAMBER
MOTION CARRIED**

PERIOD FOR GENERAL PUBLIC COMMENT

Alderman McCarthy

Mr. President, before Mr. Cutter speaks I wanted to mention meaning no disrespect to the speaker, I am not feeling well, and I am going to leave.

James Cutter, 86 Palm Street

Stated he and his wife are regular voters and 2 of the 17% who voted in the last election. He stated he submitted a Letter to the Editor printed November 12th titled One Man's Attempt to Fight City Hall so the readers would be aware of his problem and perhaps to help someone. He remarked he has written to Mayor Lozeau asking for an appointment three times. Alderman Clemons has done the best he could to get an appointment for him and Alderman Teeboom made an effort. All were denied.

Stated he has attended all of the Aldermanic meetings in the last three months and read all of the statutes, etc. that pertain to building permits. No one can say they have not heard his comments or deny the city has made the mistakes that caused his problems. He reiterated he has not heard from Mayor Lozeau or the Legal Department.

He remarked the sooner his neighbors are informed to return his land to him the sooner he will be finished.

REMARKS BY THE MEMBERS OF THE BOARD OF ALDERMEN

Alderman Flynn

Remarked he generally tries to be very careful when discussing contracts. The policemen's contract was one of the first to come forward in the last set of negotiations and brought something that was somewhat reasonable and had healthcare concessions that other unions are just catching up to this September. They have been in the lead in helping resolve some of the contract disputes. Tonight's contract was an expensive contract, and at some point we will have to come to grips on how to get a handle on what the budgets will be for the next two years. We have committed ourselves to a lot of money.

Commented at one time the ERP was supposed to be \$700,000 in next year's contract, at some point some part of the bond for the Broad Street Parkway is going to start being repaid, and there were more than 20% of the residents that had tax increases last year.

He remarked the decisions being made are building the case for next year's budget and they become things that cannot be compromised. Once they are in the contract we will have to find a way to support these things. There is a tough road ahead for the next two years. Every vote is laying the foundation for a more difficult road.

Alderman Teeboom

Spoke about committees stating that is where the work is supposed to take place. The Personnel/Administrative Affairs Committee has a meeting on Thursday and has four ordinances tabled. He is not clear on why they are tabled. He commented an endorser of an ordinance does not have to be present for a debate to take place on an item. If the committee wants to move to disapprove they will then send it back to the full board. Some tabled items have been tabled since October.

Another problem in committee is only the members of a committee can vote on something. When something is tabled only a committee member can vote to table it. That is unfair to those who want to consider and debate the legislation in the committee forum. O-09-77 is in that committee and should show you what should not happen in committee; it was introduced and before anyone could say anything Alderman Chasse stated to him it was just an ax being ground down and motioned to table the legislation. He should have discussed the problem he had with the legislation instead of tabling it without further discussion. That is not consistent with Masons, which says you table an item because you are either waiting for additional information or if a large amount of legislation comes in with higher priority.

The President of the board was present for the meeting and commented on the amendment he tried to introduce by saying "amendments to correct the shortsightedness that was exhibited when the thing was submitted in the first place" suggesting submitting the amendment was shortsightedness. He questioned if that was the purpose of a committee to denigrate the maker of a motion who attempts to make an amendment and happens not to be a member of the committee.

Stated his hope the committee takes up the four pieces of legislation currently being held.

Alderman Deane

Stated he moved to table two pieces of Alderman Teeboom's legislation out of courtesy because he was not there. In any committee he tries to be courteous to the motives of the prime sponsor of legislation to give them an opportunity to speak on it. That is why he motioned to table. He feels it is important to hear the views and rationale of the sponsor of legislation. He stated he did attempt to take the items from the table at the last meeting, and the motion failed.

Alderman Plamondon

Expressed Happy Birthday wishes to the President.

Committee announcements:

Alderman Tabacsko

The Planning & Economic Development Committee currently scheduled for Tuesday, December 15th will be re-scheduled for Monday, December 21st to take up the legislation received tonight.

Alderman Cox

The Personnel/Administrative Affairs Committee will meet on Thursday at 7:00 p.m. in the Aldermanic Chambers. They will also be reviewing the Mayor's appointments that came in under suspension of the rules this evening. The BID committee will be having their second meeting in room 208 Friday morning at 8:00 a.m.

Alderman Plamondon

The Committee on Infrastructure will meet tomorrow evening at 7:00 p.m. in the Aldermanic Chamber. They will be addressing the reflection garden and labyrinth over at Rotary Common and a few issues for Norfolk Street.

Alderman Wilshire

There is a meeting of the Human Affairs Committee on Thursday, December 17th, but it appears to conflict with the Joint Special School Building Committee.

Alderman Deane

Mayor, can we get some information on the two names that you brought in this evening prior to Thursday?

Mayor Lozeau

Yes.

ADJOURNMENT

**MOTION BY ALDERMAN WILSHIRE THAT THE DECEMBER 8, 2009 MEETING
OF THE BOARD OF ALDERMEN BE ADJOURNED
MOTION CARRIED**

The meeting was declared adjourned at 8:42 p.m.

Attest:

Paul R. Bergeron, City Clerk

Solid Waste Department: Landfill Residential Permit Price Increase

- Currently we sell 13,000. Residential Permits per year.
- Current Permit Price \$5.00ea. or \$65,000. per year total.
- Permit Price has remained at the same price for the past 8 + years.

Community Comparison:

DISPOSAL FEES/PERMITS	MANCHESTER	CONCORD	HUDSON	MERRIMACK	NASHUA
RESIDENTIAL PERMIT FEE	\$5.00	\$0.00	\$0.00	\$0.00	\$5.00
FREON APPLIANCES	\$15.00	\$25.00	\$30.00	\$15.00	\$0.00
METAL	\$10.00	\$10.00	\$20.00	\$15.00	\$0.00
NON METAL (BULK)	\$0.00	\$10.00	\$30.00	<1,000lbs Free. >\$122. Ton	\$0.00
E-WASTE	\$10.00	\$20.00	\$30.00	\$10.00	2 FREE \$5.00 PER ADDITIONAL
PROPANE TANKS	\$5.00	\$12.00	NO TANK DISPOSAL	\$5.00	\$0.00

- Reclamation Trust Fund is a separate revenue fund used for the disposal of Automotive Waste and Recycling; monies used from this fund are for these business functions.

APPOINTMENTS BY THE MAYOR

SUSPENSION OF RULES

December 8, 2009

Review and Comment Commission

Jean Gottesman (New Appointment)
18 Indian Rock Road
Nashua, NH 03063

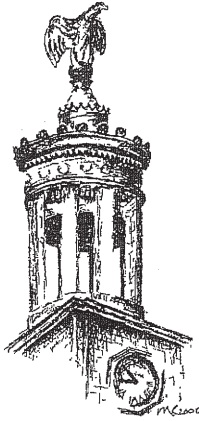
Term to Expire: December 1, 2012

Leslie Mendenhall (New Appointment)
14 Fowell Avenue
Nashua, NH 03060

Term to Expire: December 1, 2012

I respectfully request that these appointments be confirmed.

Donnalee Lozeau
Mayor



Nashua City Hall Press Release

**Contact: Donnalee Lozeau
603-589-3260**

**EMBARGOED FOR RELEASE UNTIL
CONCLUSION OF BOA MEETING
DECEMBER 8, 2009**

Nashua Mayor Suspends Efforts to Explore Alternative Solutions to the Pennichuck Dispute

City Will Continue to Pursue Eminent Domain at Fair Market Value

As of December 8, 2009, the City of Nashua has directed two special advisors hired to assist in its efforts to acquire Pennichuck Water Works to cease their work.

At the public meeting of the Board of Aldermen on December 8, Mayor Donnalee Lozeau announced that she had notified C.W. Downer and Co., an investment banking company, and Rath, Young and Pignatelli, a law firm with expertise in business and financial transactions, that they should cease any current work on behalf of the city. The two special advisors were hired last November.

"Public statements made by Pennichuck's management show that they are focused on an inflated value for the company that is not supported by the company's financial performance or other measures of fair market value. In light of these public statements, I do not see a reasonable alternative on the horizon, and I must act to protect the City's budget dollars. Although we believe this effort to explore a better path than eminent domain has been useful, the City is not prepared to continue an open-ended commitment of time and resources."

At its annual shareholders' meeting on May 6, Pennichuck Chief Executive Officer Duane Montopoli presented research from Gabelli & Company, Pennichuck's largest shareholder, arguing that the City would be better off paying \$33 per share than pursuing the eminent domain taking. Montopoli used this figure to illustrate why a negotiated stock sale at that price would be better for both sides than to continue the eminent domain fight.

Mayor Lozeau emphasized that she continues to believe that a negotiated solution would be better than eminent domain. However, she strongly disagreed that the City would be better off paying \$33 per share. Noting that Pennichuck's stock is already trading at a premium due to takeover speculation, Mayor Lozeau said "It is one thing to pay a fair market value price for the business. But paying \$33, as publicly suggested by the company and its largest shareholder, would result in an unacceptable transfer of Nashua water customer dollars into the pockets of shareholders. I

cannot justify paying an unreasonable above-market stock price, especially during these hard economic times.”

The special advisors examined publicly available information about Pennichuck and other similar water utilities and advised the City that the fair market value for all of Pennichuck Corporation, including Pennichuck Water Works, is about \$25 per share. This estimate includes a substantial buyout premium.

In July 2008, the New Hampshire Public Utilities Commission approved the City’s eminent domain taking of the water business owned by Pennichuck Water Works, Inc. for a cost of \$203 million, along with a mitigation fund at a cost of \$40 million. Both the City and the company have appealed this order. Lozeau said: “We continue to believe that although the PUC correctly approved the City’s acquisition, the proper valuation of the water business is no more than \$151 million, which is the amount approved by PUC Commissioner Cliff Below in his well-written dissenting opinion. The higher amount is simply not justified by the facts, the law, or the fair market value of Pennichuck.”

Mayor Lozeau did not permanently close the door on further discussions. “The City remains prepared to pursue several possible non-litigation approaches that would reflect the fair market value of the company, including a typical premium for public deals of this type. The City’s objective remains to secure and protect our water supply and watershed resources for the long-term benefit of its citizens at the lowest possible cost. But as long as Pennichuck’s management continues to endorse an unreasonably high valuation for the company, the City’s only alternative is to proceed solely on the eminent domain path with all its costs and delays.”

Lozeau said, “Before they ceased work at my direction, the City’s advisers informed me that an additional roadblock in the way of achieving an alternative transaction is a “poison pill” provision put in place by Pennichuck’s Board of Directors that effectively prevents direct discussions between the City and Pennichuck’s shareholders.” Lozeau called for the Pennichuck Board to remove the poison pill so that their shareholders can decide if a stock transaction with Nashua should take place.

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Nashua and Pennichuck Corporation

December 8, 2009



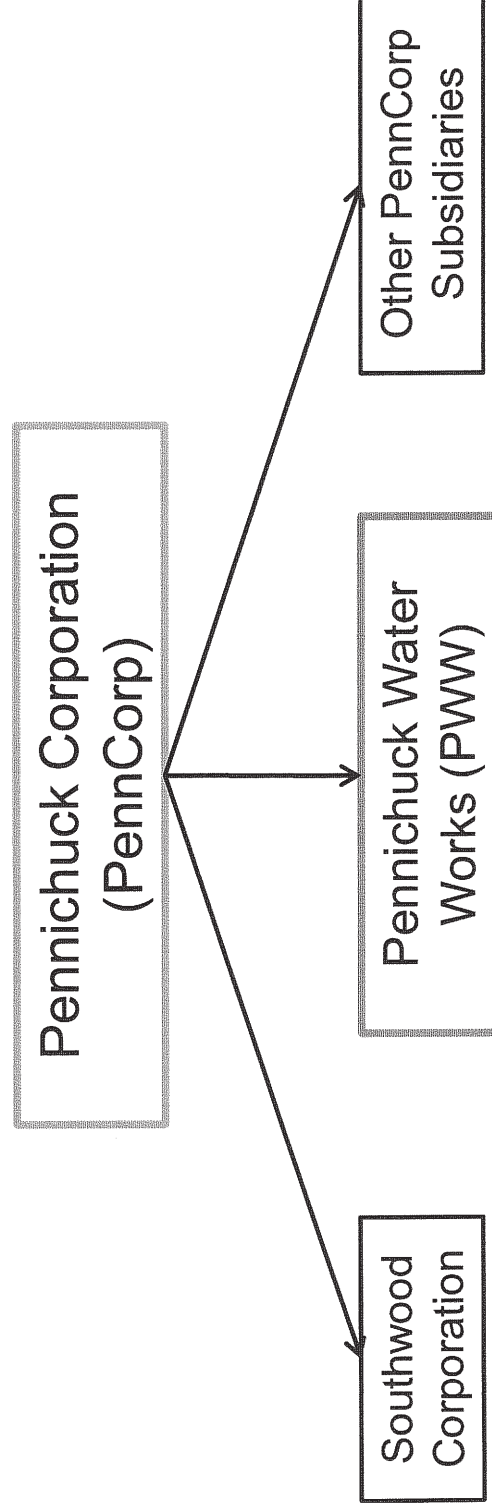
Executive Summary

- Last year, the City hired special advisors to help explore the acquisition of Pennichuck Corporation (PennCorp) at fair market value.
- Those advisors, relying solely on public information, have determined that the fair market value for all of PennCorp, including an appropriate buyout premium, is about \$25 per share.
- Based on public statements made by PennCorp's management, they are focused on an inflated value of more than \$30 per share. That price is not supported by the company's financial performance or by other measures of fair market value.
- Paying more than fair market value is the same as taking money from Nashua water customers and handing it to the out-of-state investors who control PennCorp.
- After full consideration of all alternatives, the City has directed its advisors to cease their work.
- The City will continue to vigorously pursue its eminent domain appeal. The City strongly believes the NHPUC majority erred when it issued a decision that failed to consider a market-based approach to valuing Pennichuck Water Works.



Roadmap

- Pennichuck Corporation (PennCorp) is a public company that owns five subsidiaries, including Pennichuck Water Works (PWW), Southwood Corporation, two smaller water utility companies and a water service company.
- Nashua has the right to take PWW under eminent domain (bottom blue box).
- The City has also explored the possibility of acquiring the entire company, PennCorp, at fair market value (upper green box).



Eminent Domain Background

- The Mayor and Board of Aldermen are fully committed to securing and protecting the water resources of the citizens of Nashua and its neighbors for generations to come at the lowest possible cost.
- In January 2003 the citizens of Nashua voted in favor of buying their water supply from PennCorp.
- In July 2008 the New Hampshire Public Utilities Commission ruled that the City had the right to take its water supply from PennCorp through eminent domain.
- The City welcomed that ruling but strongly disagreed with the price set by the PUC. The City has appealed that part of the decision to the New Hampshire Supreme Court.
- While that appeal is pending, the City brought in outside advisors to help explore the acquisition of PennCorp at fair market value.

A fair market value settlement is in the best interests of both PennCorp shareholders and the citizens of Nashua.



Fair Market Value Transaction

- Fair market value is the price a motivated corporate buyer would pay for PennCorp.
- The City directed its advisors to help determine fair market value. A summary of their analysis is presented on the following pages.
- The City is convinced that fair market value for PennCorp is about \$25 per share.
- Not surprisingly, the largest shareholder in PennCorp, Gabelli & Company, has publicly argued for a higher price of \$33 per share. The analysis Gabelli used to argue for that higher price is wrong.
- Unfortunately, PennCorp management presented Gabelli's incorrect analysis to their shareholders on May 6, 2009. That analysis does not provide a fair market value basis to settle the eminent domain dispute.
- After full consideration of all alternatives, the City has directed its advisors to cease their work.

Paying more than fair market value is the same as taking money from Nashua water customers and handing it to the out-of-state investors who control PennCorp.



How Did Nashua's Advisors Determine Fair Market Value?

- There are a number of well-established ways to determine fair market value.
- For a public company, like PennCorp, the best way is to look at values of other public companies that are most like them. That means other publicly traded water utilities.
- In their analysis, Nashua's advisors looked at how those other public utilities are valued in terms of their financial performance, their book value and their rate base. (Rate base is the asset value used to set billing rates for water utility customers.)
- They supplemented their public company analysis with other important information:
 - They had direct conversations with other companies in the industry.
 - They evaluated sales of other water utilities to corporate buyers.
 - They studied reports from independent investment analysts.



Nashua's Advisors Determined Fair Market Value Is About \$25 Per Share

- First Nashua's advisors selected the public companies that are most like PennCorp. These are the same companies selected by PennCorp itself and by most industry analysts.
- Then they analyzed how those public companies are valued by the market. They looked at three measures of value: financial performance, book value, and rate base.
- Finally, they applied a "buyout premium," which is the extra amount a buyer pays to take over a public company.
- Typical buyout premiums are 20% to 40%. Nashua's advisors used the high end of that range for their analysis.
- The resulting fair market value of PennCorp is about \$25 per share.
- These results were validated by discussions with other industry players and by research from independent stock analysts.



Fair Market Value Is The Right Value

- Gabelli and PennCorp have publicly argued that the City would be better off paying \$33 per share to buy all of PennCorp than it would be buying just PWV through eminent domain.
- There are major problems with this argument:
 - Gabelli and PennCorp incorrectly assume there are only two possible outcomes to this dispute.
 - The City strongly believes the price set by the Public Utilities Commission for PWV is too high. That is why Nashua has appealed to the New Hampshire Supreme Court.
 - There is no fair market value justification for a \$33 price per share.

The City is open to a fair market value resolution that serves the best interests of all parties.

